

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID FELT,

Plaintiff,

v.

STANDARD INSURANCE COMPANY and
DOES 1 through 50,

Defendants.

Civil No. 08cv801-DMS (CAB)

**CASE MANAGEMENT CONFERENCE
ORDER REGULATING DISCOVERY AND
OTHER PRETRIAL PROCEEDINGS**

**(Fed. R. Civ. P. 16)
(Local Rule 16.1)
(Fed. R. Civ. P. 26)**

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a Case Management Conference was held on July 8, 2008. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing, IT IS HEREBY ORDERED:

1. Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed on or before **August 8, 2008**.

2. On or before **October 8, 2008**, all parties shall exchange with all other parties a list of all expert witnesses expected to be called at trial. The list shall include the name, address, and phone number of the expert and a brief statement identifying the subject areas as to which the expert is expected to testify. The list shall also include the normal rates the expert charges for deposition and trial testimony. On or before **October 22, 2008**, any party may supplement its designation in response to any

1 other party's designation so long as that party has not previously retained an expert to testify on that
2 subject.

3 3. Each expert witness designated by a party shall prepare a written report to be provided to
4 all other parties **no later than January 5, 2009**, containing the information required by Fed. R. Civ. P.
5 26(a)(2)(A) and (B).

6 **Except as provided in the paragraph below any party that fails to make these disclosures**
7 **shall not, absent substantial justification, be permitted to use evidence or testimony not disclosed**
8 **at any hearing or at the time of trial. In addition, the Court may impose sanctions as permitted by**
9 **Fed. R. Civ. P. 37(c).**

10 4. Any party, through any expert designated, shall in accordance with Fed. R. Civ. P.
11 26(a)(2)(C) and Fed. R. Civ. P. 26(e), supplement any of its expert reports regarding evidence intended
12 solely to contradict or rebut evidence on the same subject matter identified in an expert report submitted
13 by another party. Any such supplemental reports are due on or before **January 20, 2009**.

14 5. All discovery, including expert discovery, shall be completed on or before **February 9,**
15 **2009**. "Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure
16 must be initiated a sufficient period of time in advance of the cut-off date, so *that it may be completed by*
17 the cut-off date, taking into account the times for services, notice, and response as set forth in the Federal
18 Rules of Civil Procedure. All discovery motions must be filed within 30 days of the service of an
19 objection, answer or response which becomes the subject of dispute or the passage of a discovery due
20 date without response or production, and only after counsel have met and conferred and have reached
21 impasse with regard to the particular issue. Counsel shall refer to Judge Bencivengo's chambers rules
22 for handling discovery disputes, which are available at the Court's website.

23 6. All motions, other than motions to amend or join parties, or motions in limine, shall be
24 **FILED** on or before **March 9, 2009**. Motions will not be heard or calendared unless counsel for the
25 moving party has obtained a motion hearing date from the law clerk of the judge who will hear the
26 motion. **For motions to be heard before the Hon. Dana M. Sabraw, be advised that the parties**
27 **must file their moving papers the day the motion hearing date is received from the Court. Please**
28 **plan accordingly.** You may need to contact the judge's law clerk in advance of the motion cut-off to

1 assess the availability of the Court's calendar. **Failure of counsel to timely request a motion date may**
 2 **result in the motion not being heard.**

3 7. Briefs or memoranda in support of or in opposition to any pending motion shall not
 4 exceed twenty-five (25) pages in length without permission of the judge or magistrate judge who will
 5 hear the motion. No reply memorandum shall exceed ten (10) pages without leave of the judge or
 6 magistrate judge who will hear the motion.

7 8. A Mandatory Settlement Conference shall be conducted on **September 8, 2008**, at **2:00**
 8 **p.m.** in the chambers of Magistrate Judge Cathy Ann Bencivengo. Counsel shall submit **confidential**
 9 settlement statements **directly to chambers** no later than **September 2, 2008**. Each party's settlement
 10 statement shall set forth the party's statement of the case, identify controlling legal issues, concisely set
 11 out issues of liability and damages, and shall set forth the party's settlement position, including the last
 12 offer or demand made by that party, and a separate statement of the offer or demand the party is prepared
 13 to make at the settlement conference. **Settlement conference briefs shall not be filed with the Clerk**
 14 **of the Court, nor shall they be served on opposing counsel.**

15 9. Pursuant to Local Civil Rule 16.3, all party representatives and claims adjusters for
 16 insured defendants with full and unlimited authority¹ to negotiate and enter into a binding settlement, as
 17 well as the principal attorney(s) responsible for the litigation, must be present and legally and factually
 18 prepared to discuss and resolve the case at the mandatory settlement conference. Retained outside
 19 corporate counsel shall not appear on behalf of a corporation as the party who has the authority to
 20 negotiate and enter into a settlement. Failure to attend the conference or obtain proper excuse will be
 21 considered grounds for sanctions.

22 10. In jury trial cases before the Honorable Dana M. Sabraw, neither party is required to file
 23 Memoranda of Contentions of Fact and Law.

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 25 ¹ "Full authority to settle" means that the individuals at the settlement conference must be authorized to
 26 fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties.
 27 Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have
 28 "unfettered discretion and authority" to change the settlement position of a party. Pitman v. Brinker Intl., Inc.,
 216 F.R.D. 481, 485-486 (D. Ariz. 2003). The purpose of requiring a person with unlimited settlement authority
 to attend the conference includes that the person's view of the case may be altered during the face to face
 conference. Id. at 486. A limited or a sum certain of authority is not adequate. Nick v. Morgan's Foods, Inc.,
 270 F.3d 590 (8th Cir. 2001).

1 11. All parties or their counsel shall also fully comply with the Pretrial Disclosure
2 requirements of Fed. R. Civ. P. 26(a)(3) on or before **June 19, 2009**. **Failure to comply with these**
3 **disclosures requirements could result in evidence preclusion or other sanctions under Fed. R. Civ.**
4 **P. 37.**

5 12. Counsel shall meet together and take the action required by Local Rule 16.1(f)(4) on or
6 before **June 26, 2009**. At this meeting, counsel shall discuss and attempt to enter into stipulations and
7 agreements resulting in simplification of the triable issues. Counsel shall exchange copies and/or display
8 all exhibits other than those to be used for impeachment. The exhibits shall be prepared in accordance
9 with Local Rule 16.1(f)(4)(c). Counsel shall note any objections they have to any other parties' Pretrial
10 Disclosures under Fed. R. Civ. P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed
11 pretrial conference order.

12 13. The proposed final pretrial conference order shall include a brief statement summarizing
13 the case which may be read to the jury. The pretrial conference order, including any objections the
14 parties have to any other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures shall be prepared, served
15 and lodged with the Clerk of the Court on or before **July 2, 2009**, and shall be in the form prescribed in
16 and in compliance with Local Rule 16.1 (f)(6). Counsel shall also bring a court copy of the pretrial order
17 to the pretrial conference.

18 14. The final pretrial conference shall be held before the **Honorable Dana M. Sabraw**,
19 United States District Court Judge, on **July 10, 2009**, at **10:30 a.m.**

20 15. A Settlement Conference will be held on **July 22, 2009**, at **2:00 p.m.**. All parties or their
21 representatives who have authority to enter into a binding settlement, in addition to the attorneys
22 participating in the litigation, shall be present at the conference. (see Para. 9, *supra*)

23 16. A trial will be held before the **Honorable Dana M. Sabraw**, United States District Court
24 Judge, on **August 24, 2009**, at **9:00 a.m.**

25 17. The dates and times set forth herein will not be further modified except for good cause
26 shown.

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1 18. Plaintiff's counsel shall serve a copy of this order on all parties that enter this case
2 hereafter.

3 **IT IS SO ORDERED.**

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5 DATED: July 8, 2008

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8 **CATHY ANN BENCIVENGO**
9 United States Magistrate Judge
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